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# Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-906

RANCHO LA COSTA, INC., dba LA COSTA COUNTRY CLUB,

*Petitioner,*

*v.*

ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD and CALIFORNIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,

*Respondents.*

## PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD AND THE CALIFORNIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

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IN THE

SUPREME COURT OF THE UNITED

STATES

OCTOBER TERM, 1979

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NO. _____

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RANCHO LA COSTA, INC., dba LA COSTA COUNTRY CLUB, Petitioner.

vs.

ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD, and DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL, Respondents.

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# PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD AND THE CALIFORNIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

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The petitioner RANCHO LA COSTA, INC., a Nevada corporation, dba LA COSTA COUNTRY CLUB (hereinafter referred to as "LA COSTA") respectfully prays that a

writ of certiorari issue to review the judgment and opinion of the California Alcoholic Beverage Control Appeals Board which has been refused review by the California courts and affirmed by the California Supreme Court in this proceeding on September 12, 1979 by denial of a hearing.

## OPINIONS BELOW

The Supreme Court of California summarily denied a hearing on LA COSTA's Petition for Hearing and for a Writ of Review and Request for Temporary Stay, without any hearing or written opinion; a copy of the notification of said denial, dated September 12, 1979, is set forth in Appendix A hereto.

By an order dated August 17, 1979, the Court of Appeals of the State of California, Fourth Appellate District, Division One, also summarily denied without any hearing LA COSTA's Petition



for a Writ of Certiorari to Review the Order of Alcoholic Beverage Control Appeals Board with Request for Temporary Stay. A copy of the order of the Court of Appeals is set forth in Appendix B hereto.

The decision of the Alcoholic Beverage Control Appeals Board was filed on July 17, 1979, and is set forth in Appendix C hereto. That decision affirmed the decision of the Department of Alcoholic Beverage Control entered on August 24, 1978, which in turn had adopted the proposed decision of the Administrative Law Judge filed on August 17, 1978, setting forth her findings and conclusions. The decision of the Department of Alcoholic Beverage Control is set forth in Appendix D hereto, and the proposed decision of the Administrative Law Judge is set forth in Appendix E hereto.

## JURISDICTION

The summary denial of a hearing on LA COSTA's petition to the Supreme Court of California was entered on September 12, 1979, and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C §1257(3).

## QUESTION PRESENTED

Whether the State of California acted in violation of the due process clause contained in the Fourteenth Amendment to the United States Constitution when, contrary to its constitution and statutes, it suspended LA COSTA's liquor license on the basis of strict liability for the single illegal act committed by an employee who was not acting within the scope of his employment and whose scope of employment did not include the sale of alcoholic beverages.



## CONSTITUTIONAL and STATUTORY PROVISIONS INVOLVED - APPENDIX F

## STATEMENT OF THE CASE

On January 20, 1978, the Department of Alcoholic Beverage Control (hereinafter the "Department") filed an accusation against LA COSTA dated November 16, 1977, which charged that LA COSTA, by and through its agent and employee, Frank Rayo, permitted and suffered its licensed premises to be used in a manner which created conditions contrary to public welfare and morals in violation of Article XX, Section 22 of the Constitution of the State of California and Section 24200(a) of the California Business and Professions Code in that:

> "1. On or about July 25, 1977, respondent by its agent and catering manager, Frank Rayo, did suffer and permit the said premises to be used as a place where Frank Rayo did solicit and attempt to solicit confidential informant 'Rhonda' to engage in an act of prostitution.

> 2. On or about July 25, 1977, respondent by its agent and catering manager, Frank Rayo, did suffer and permit the said premises to be used as a place wherein Frank Rayo did procure and attempt to procure confidential informant 'Rhonda' to engage in an act of prostitution."

The accusation charged that by reason of these allegations grounds for suspension and revocation of LA COSTA's liquor licenses existed pursuant to Section 24200(a) of the Business and Professions Code and Article XX, Section 22 of the State Constitution.

Additional grounds were alleged to exist under California Business and Professions Code Section 24200(b)[1] by reason of an alleged violation by LA COSTA of California Penal Code Sections 266(i)[2], 664[3] and 647(b)[4].

A hearing on said accusation was held on August 2 through August 4, 1978 in San Diego, California before Administra-



tive Law Judge Marilyn L. Nelson wherein the issues of due process were orally argued. The proposed decision of the administrative Law Judge (Appendix E) was filed on August 17, 1978, and concluded that the accusation was true and that petitioner was subject to discipline under Section 24200(a) of the Business and Professions Code and Article XX, Section 22 of the State Constitution. The decision also found that grounds did not exist for discipline pursuant to Section 24200(b) of the Business and Professions Code.

On August 24, 1978, the Department adopted the proposed decision of the Administrative Law Judge as its decision in the case (Appendix D). Pursuant to a Notice of Appeal filed by LA COSTA on September 5, 1978, a hearing was held before the Alcoholic Beverage Control Appeals Board (hereinafter referred to

as the "BOARD"). In the brief to the Board, LA COSTA presented its arguments pursuant to the due process clause. On July 17, 1979, the BOARD filed its written opinion affirming the decision of the Department, completely ignoring the due process issues, and ordering LA COSTA's liquor licenses be suspended (Appendix C).

On August 16, 1979, LA COSTA filed its Petition for a Writ of Certiorari to Review Order of Alcoholic Beverage Control Appeals Board and for Temporary Stay in the California Court of Appeals, Fourth Appellate District, Division One. The Petition contained LA COSTA's arguments pursuant to the due process clause. On August 17, 1979, said Petition and Request for Temporary Stay was summarily denied without a hearing by the Court of Appeals (Appendix B).



On August 27, 1979, LA COSTA filed its Petition for Hearing and for Writ of Review and Request for Temporary Stay in the California Supreme Court. The Petition contained LA COSTA'S arguments pursuant to the due process clause. On September 12, 1979, said Petition was summarily denied without a hearing by the Supreme Court (Appendix A).

## STATEMENT OF FACTS

### LICENSED PREMISES

LA COSTA is located in Carlsbad, California about thirty miles north of San Diego. The resort covers an area of approximately 12 acres not including the 18-hole championship golf course (R.T. 140). In July of 1977, LA COSTA employed approximately 950 people (R.T. 163). LA COSTA holds a bona fide master liquor license, three duplicate licenses and a caterer's permit. The duplicate licenses

are for the tennis club, designated rooms on the lower floor of the main clubhouse, and for the additional bar on the lower level of the main clubhouse (R.T. 97).

THE MISCONDUCT

Rhonda Lillien, working as a paid, civilian undercover operative for the San Diego Sheriff's Department, was equipped with a tape recording device in her purse when she met one Terri Bishop at the LA COSTA cocktail lounge on July 25, 1977 (R.T. 5). Efforts were made to contact Frank Rayo by telephone (R.T. 6). After Rayo appeared, the three individuals sat in the bar area approximately 15 minutes before Rayo suggested that they go to his office for privacy (R.T. 7). The discussion in Rayo's office concerned "working La Costa customers" which Lillien understood to mean prostitution (R.T. 8).

Randall A. Anderson, a sergeant with



the San Diego Sheriff's Department, arrested Bishop and Rayo in Rayo's catering office while Lillien was present (R.T. 72). He gave Rayo the Miranda warnings (R.T. 73).

PREVIOUS ARRESTS FOR PROSTITUTION AT LA COSTA

San Diego County Sheriff's Sergeant Anderson testified that in the three and a half years that he had worked in the North County Vice Detail he had made only three other arrests for prostitution at LA COSTA (R.T. 75-76).

Roy J. Kundtz, Chief of Police for the City of Carlsbad, testified that male and female undercover officers had been at LA COSTA without the knowledge of the management for the past four years and that no arrests for prostitution had been made by the Police Department in that time (R.T. 209).

ATTEMPTS TO CONTROL PROSTITUTION

There are 28 basic departments within LA COSTA as well as several sub-departments. There are 37 department heads (R.T. 146). There had been numerous occasions at department head meetings where the department head had been instructed by the general manager, assistant general manager, the owners of LA COSTA and the director of security that any prostitution, gambling or other illegal activities observed on the premises should be immediately reported to the general manager or director of security, who in turn would notify local authorities (R.T. 153). All employees had been instructed that any involvement in prostitution would result in immediate termination and prosecution by the local authorities (R.T. 153). The express attitude of the management and board of directors of LA COSTA toward prostitution being con-



ducted on the premises is and has been that it is forbidden and will not be tolerated (R.T. 163).

LA COSTA maintains its own security staff on the property consisting of a director and four security guards (R.T. 151-152). During large golf and tennis tournaments numerous additional undercover agents help with crowd control and the prevention of any illicit activities on the property (R.T. 151). The head of security has been explicitly instructed by management that prostitution would not be tolerated on the premises (R.T. 152). Management has requested that the Carlsbad Chief of Police provide undercover detectives to help prevent prostitution at La Costa (R.T. 157). There is an ongoing effort with the Carlsbad Police Department to come out and work undercover to prevent prostitution in the

cocktail lounge (R.T. 158). In an effort to facilitate the undercover operations of the police officers, they have been provided hotel keys so that they can act as guests and more easily be able to conduct their investigations (R.T. 158). Carlsbad Chief of Police Kundtz testified that there was never a lack of cooperation by the LA COSTA management in ferreting out and controlling prostitution (R.T. 193). In his opinion the officials of LA COSTA had made a very good continual effort to control prostitution on the premises (R.T. 193).

William S. Huntington, a Carlsbad police detective, testified that he had been assigned for the previous four years to vice enforcement and had been at LA COSTA many times during that time period (R.T. 213). He stated that he would go out to LA COSTA on his own and



attempt to make contact with individuals or at other times he would receive a phone call from the management at LA COSTA who thought they had prostitutes working on the premises and requested assistance (R.T. 215). In his opinion LA COSTA has made a good effort at attempting to eliminate prostitution on the premises (R.T. 217).

Allard Roen, one of the major stockholders as well as Chief Operating Officer and Chairman of the Board of Directors of the LA COSTA, testified that the management does not want prostitution at LA COSTA because it is not the image they want for the resort (R.T. 241) and that prostitution would be detrimental to the resort because while it may satisfy a few guests it would alienate many more if solicitation for prostitution were observed (R.T. 247). Roen felt that if prostitution were permitted on the

premises, it would be detrimental to the resort's income as well as its reputation (R.T. 248-249).

DUTIES AND SUPERVISION OF RAYO

The declaration of Robin Kuest, the former general manager of LA COSTA, stated that Rayo, who was the catering manager of LA COSTA, had no control or authority with respect to the operation of the cocktail lounge, bars or liquor facilities. He had personally instructed Rayo and other employees that prostitution activities would not be tolerated and that such activity would result in immediate dismissal.

Robert S. Mott, the general manager of LA COSTA, testified that the catering manager has a staff of 28 people (R.T. 185). The catering manager is the liaison between management and conference or convention members (R.T. 253). The



catering manager is responsible for food functions in the conference center facility. He is concerned with the setup of the room, the decorations and generally insuring that the party goes well for the guests (R.T. 146). He can hire and fire within his department (R.T. 148). He has no authority to book rooms, to set prices, or to change menus (R.T. 147). He has no authority to provide alcoholic beverages (R.T. 148), and would have to arrange with the waitresses to serve wine with dinner when it was provided for on the conferees' menu (R.T. 184). He has no policy making authority (R.T. 148). All policy making decisions are made by the Board of Directors (R.T. 149).

Mott testified that Rayo was supervised by the general manager and on special occasions the assistant general

manager also supervised his delegated functions (R.T. 146). Mott stated that Rayo was specifically instructed on four or five different occasions that the management would not permit any improper activities, including prostitution on the premises (R.T. 167). Mott stated that as assistant general manager and as general manager he has never received a complaint indicating that Rayo may have participated in a call girl operation any time prior to July 1977 (R.T. 170). Roen stated no member of the Board of Directors, no person in a managerial capacity nor any employee knew of Rayo's acts in regard to prostitution prior to the time of his arrest. If they did know they would have been terminated as well (R.T. 249). Rayo was immediately terminated as a result of his illegal activity (R.T. 153-241).



## REASONS FOR GRANTING THE WRIT

### THE STATE, CONTRARY TO ITS CONSTITUTION AND STATUTES, AND WITHOUT NOTICE TO ITS LIQUOR LICENSEES, HAS CREATED A STANDARD OF STRICT LIABILITY FOR AN EMPLOYEE'S ILLEGAL ACT COMMITTED OUTSIDE THE BUSINESS AND OPERATION OF THE LICENSE.

### A. A LIQUOR LICENSE IS A SUBSTANTIAL BENEFIT CONFERRED UPON THE LICENSEE AND SUSPENSION OF THAT LICENSE MUST COMPLY WITH THE REQUIREMENTS OF DUE PROCESS.

A threshold consideration for due process analysis is whether there has been or will be any deprivation of life, liberty or property to trigger the operation of the Fourteenth Amendment to the United States Constitution. The distinction between right and privilege is no longer constitutionally significant for such analysis. Bell v. Burson, 402 U.S. 535, 539 (1971); Morrissey v. Brewer, 408 U.S. 471, 482 (1972); Sherbert v. Verner, 374 U.S. 398, 404 (1963); Slochower v. Board of Education, 350 U.S. 551 (1956); Speiser v. Randall,

357 U.S. 513 (1958). However, deprivation of some entitlement or significant right is required before the due process protections become operative. Board of Regents of State Colleges v. Roth, 408 U.S. 564, 577 (1972). The substantial benefit involved in the instant case is the entitlement to and possession of a liquor license.

> "Protected interests in property (within the Fourteenth Amendment) are normally not created by the Constitution. Rather they are created and their dimensions are defined by an independent source such as state statutes or rules entitling the citizen to certain benefits." Goss v. Lopez, 419 U.S. 565, 572 (1975).

The State has established laws, rules and regulations that deal with the procurement, enforcement and suspension of liquor licenses (California Business and Professions Code, Section 23000 et seq.); California Administrative Code, Title IV, Sections 1 et seq.). Furthermore, the



State has established legislation concerning the procedural and evidentiary requirements relating to hearings on the question of suspension or revocation of a liquor license (California Government Code Section 11500 et seq.).

It is clear that the limitations of due process apply to the Alcoholic Beverage Control Department's power to suspend or revoke a liquor license once the STATE has, through its legislative branch, conferred a substantial benefit, to wit, a liquor license, upon LA COSTA. Dallam v. Cumberland Valley School District, 391 F. Supp. 358, 361 (1975); Smith v. McGriff, 434 F. Supp. 673, 680 (1976).

B. EVEN THOUGH THE TWENTY-FIRST AMENDMENT CONFERS POWERS ON THE STATES WITH RESPECT TO THE CONTROL OF ITS LIQUOR INDUSTRY, THE STATE'S ACTION IN SUSPENDING LA COSTA'S LIQUOR LICENSE IS UNREASONABLE AND IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

The liquor business "stands, by universal consent, in a class peculiarly within the police power" of the States. South Carolina v. United States, 199 U.S. 437 (1905). This power is an incident of society's right to self protection; it rests upon the right of the state to care for the health, morals and welfare of the people and extends to everything prejudicial thereto. Eberle v. Michigan, 232 U.S. 700, 707 (1913).

The Twenty-First Amendment to the United States Constitution grants to the States the power to control the liquor industry within their boundaries (1 U.S.C. Amendment 21). It has been interpreted to confer upon the States broad regulatory power over the liquor traffic within their territories. Hostetter v. Idelwild Bon Voyage Liquor Corp., 377 U.S. 324, 330 (1964); Joseph E. Seagram and Son, Inc. v. Hostetter, 384 U.S.



35, 41 (1966).

The Supreme Court recently reviewed the powers of the States pursuant to the Twenty-first Amendment in California v. LaRue, 409 U.S. 109 (1972). In LaRue, the Court discussed the cases in which it recognized that the Twenty-First Amendment conferred something more than the normal state authority over public health, welfare and morals and noted that those "decisions did not go so far as to hold that the Twenty-First Amendment supersedes all other provisions of the United States Constitution in the area of liquor regulations." Id. at 115.

Womens' Liberation Union of Rhode Island v. Israel, 512 F. 2d 106 (1st Cir. 1975):

> "LaRue, while it reiterates the proposition long embraced by the Court that the states have broad powers to re-

> gulate the sale of liquor, does not release the states from the requirement that the objective of the regulation be permissible, and that the means selected be rationally related to the end to be achieved."
> Id. at 108.

Thus, the police power of the STATE with respect to regulation of the liquor industry is limited by the concept of due process. Parks v. Allen, 426 F. 2d 610, 613 (5th Cir. 1970).

It is unreasonable for the STATE, purportedly in the interest of the public's welfare, to suspend an employer's liquor license on the theory of its responsibility for a single illegal act of an employee committed outside the scope of his employment duties and at a time when he was not on duty. In other words, the STATE, by its action in the instant case, without authority pursuant



to the State Constitution or statutes, holds each California liquor license employer to a standard of strict responsibility for the personal lives and habits of its employees. Such an imposition of responsibility against every liquor license employer is not reasonably adapted to the objective of inducing temperance in the use of liquor.

Presumably, discipline against a licensee serves two functions. Initially, it punishes a licensee for wrongful acts for which he is responsible. Secondly, such discipline acts as a deterent to others to avoid similar misconduct. Neither the punitive nor the deterrent function is served if a licensee is disciplined for an employee's isolated act of misconduct which the licensee could neither anticipate nor prevent in the exercise of due diligence. If the STATE's imposition

of strict responsibility against LA COSTA is upheld herein, discipline becomes totally arbitrary and capricious depending entirely upon the fortuitous circumstance of who happens to get caught and the whim of the STATE to prosecute. Licensees, then, would have precious little incentive to take the type of affirmative action to prevent misconduct which the STATE found to have been taken by LA COSTA (Appendix E.)

The Supreme Court in Morissette v. United States, 342 U.S. 246, 256 (1951), discussed the reasoning behind strict responsibility public welfare offenses.

> "The accused, if he does not will the violation, usually is in a position to prevent it with no more care than society might reasonably expect and no more exertion than it might reasonably exact from one who assumed his responsibilities."



The Supreme Court speaks of the accused's responsibility to prevent the crime as the basis for the offense. The accused has a duty to the public, and if he is negligent in the performance of his duty because he falls below the reasonable expectations of society, then it is reasonable for him to be punished. Under the circumstances of this case (the continuous and ongoing affirmative steps undertaken by LA COSTA to prevent prostitution coupled with the commission of a single illegal act in a surreptitious manner at a time when the employee was not on duty), the California Constitution and corresponding statute have been unconstitutionally applied to LA COSTA and it is an abuse of the police power of the STATE to do so.

C. THE STATE'S APPLICATION OF ITS CONSTITUTION AND STATUTES TO THE SUSPENSION OF LA COSTA'S LIQUOR LICENSE IS IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

Article XX, Section 22, of the California Constitution provides in pertinent part:

> "...The Department of Alcoholic Beverage Control shall have the power, in its discretion, to deny, suspend or revoke specific alcoholic beverage licenses if it shall determine for good cause that the granting or continuance of such license would be contrary to public welfare or morals, or that a person seeking or holding a license has violatd any law prohibiting conduct involving moral turpitude..." [5]
> (Emphasis added.)

LA COSTA'S liquor license was suspended on the basis of the above constitutional provision and California Business and Professions Code Section 24200(a) which provides:

> "The following are the grounds which constitute a basis for the suspension or revocation of licenses:
>
> (a) When the continuance of the license would be contrary to public welfare or morals; but proceedings under this



> section upon this ground are not a limitation upon the department's authority to proceed under Article XX, Section 22, of the California Constitution."

The standard that the STATE must use for the suspension or revocation of an employer's liquor license is clear. It must "determine for good cause that the continuance of such license would be contrary to public welfare or morals." LA COSTA does not contend that the California Constitution or the Alcoholic Beverage Control statutes are unconstitutional; but rather, it contends that the STATE has unfairly and unreasonably misapplied the above-stated law to LAW COSTA in this matter and has thus violated the Fourteenth Amendment of the United States Constsitution.

LA COSTA was given notice of an accusation filed by the STATE, had a hearing on that accusation before an Administrative Law Judge, where it was

able to present, examine and cross-examine witnesses. This procedure encompasses the rudiments of procedural due process. Page v. Jackson, 398 F. Supp. 263 (N.D. Ga. 1975); Smith v. Thompson, 377 F. Supp. 556, 557 (N.D. Ga. 1974).

After presenting and proving the substantial defenses of no knowledge or acquiescence in the illegal conduct; adoption and rigid enforcement of affirmative preventative measures; and immediate termination of the employee for his single, surreptitious, illegal act, and the Administrative Law Judge's acknowledgement of truth of these defenses by specific findings, she nevertheless held that LA COSTA, by its agent, "suffered and permitted" the licensed premises to be used as a place to solicit an act of prostitution (Appendix E).

The record is devoid of any evidence that the employee was acting in the scope of the operation of the busi-



ness or of the liquor license at the time of the illegal act or that LA COSTA was so much as guilty of simple negligence in supervising the employee.

The STATE has created a standard of strict responsibility for each California liquor license whose employee commits an illegal act upon the premises at a time when he is not performing any employment function.

The STATE does provide a hearing but it is one that does not embrace an adequate opportunity to defend. Such a hearing is tantamount to no hearing since all defenses are ignored in favor of the strict responsibility doctrine. The opportunity to present every available defense is a requisite of due process. Lindsey v. Normet, 405 U.S. 56, 66,(1972). The fundamental requisite of due process is the opportunity to be heard at a hearing that is conducted in

a meaningful manner. Goldberg v. Kelly, 397 U.S. 254, 267 (1970); Armstrong v. Manzo, 380 U.S. 545, 552 (1965). The STATE's interpretation and application of the statutory requirement of a "determination for good cause that continuance of the license is contrary to public welfare and morals" to mean "responsibility for any illegal act of an employee" renders the due process requirements of notice and opportunity to be heard meaningless and hollow protections so that the hearing becomes nothing more than a charade. The deprivation of LA COSTA's liquor license, coupled with the STATE's unreasonable and unreasoned imposition of strict responsibility against every California liquor licensee is manifestly violative of the Fourteenth Amendment due process clause. Pearson v. Northeast Airlines Inc., 309 F. 2d 553, 563 (2nd Cir. 1962).



According to the STATE's application of the constitutional test of "determining for good cause", the only issues to be found at the hearing are whether the employee committed the illegal act and whether he is an employee of the liquor licensee. In most cases, the answers to these questions are known prior to the hearing.

If culpability of the licensee itself is not the issue at the hearing, then there is an irrebutable presumption that the licensee is subject to the loss or suspension of its liquor license any time one of its employees is found to have committed a public offense, regardless of whether the licensee has any control or responsibility for such an offense. Under due process, the automatic denial of a right on the basis of an irrebutable presumption is not warranted when such a presumption is not

necessarily true or universally true and when the STATE has reasonable alternative means of making the crucial determination. Vanlare v. Hurley, 421 U.S. 338 (1974). The interpretation and application of the due process clause are ostensibly procedural matters and the very nature of due process negates the use of inflexible procedures univerally applied to every imaginable situation. Goss v. Lopez, 419 U.S. 565 (1975).

The STATE's use of a regulatory scheme involving an irrebutable presumption resulting in strict responsibility of a licensee renders the licensee's "hearing" no more than a mere formality which conveniently ignores and bypasses the question of the fitness of LA COSTA as a licensee, and whether it acted in accordance with reasonable standards in its attempt to control unlawful activity on the premises. Such



a hearing is certainly not the kind mandated by the due process clause. Andrews v. Drew Municipal Separate School District, 507 F. 2d 611 (5th Cir. 1975). The position of the STATE completely ignores the constitutional requirement of specific findings of "good cause" and that "continuance of the license would be contrary to public welfare and morals". The special findings of the STATE all point to facts which indicate that a continuance of the license would be in the best interest of the public, rather than contrary to the public welfare and morals. LA COSTA has, in good faith, conscientiously and consistently adopted and followed a course of conduct designed to prevent and eliminate the occurrence of any illegal acts of misconduct on its premises. In light of such findings, there is no basis to conclude that any future opera-

tion of the premises by the licensee would be injurious to the public welfare. The Supreme Court has held that it is a denial of due process to convict a person upon a charge for which there is no evidence to support that conviction. Gregory v. City of Chicago, 394 U.S. 111,(1969).

The imposition of strict responsibility upon a licensee for the single, surreptitious personal, unpreventable and unforeseeable act of one of its employees is not reasonably related to the statutory objectives of the STATE and not permissible under the law. The licensee must be allowed to make a showing that affirmative and ongoing measures have been taken by it to prevent any wrongful acts on the premises and it must have the assurance that, as a matter of due process of law, such a showing will have a significant bearing on the



issue of the guilt of the licensee and will constitute a defense to the charge.

SUMMARY

At the hearing of the accusations, the Department presented proof of the following only:

(a) That Frank Rayo was an employee of La Costa; that on one occasion, he solicited a person to perform an act of prostitution. The Department then rested its case.

The burden was upon the Department to prove that Rayo was acting within the course and scope of his authority and that he was actually on duty at the time of the occurrence. Never did the Department prove these required facts.

After the Department rested, La Costa proved, shown by the Findings, the following facts:

1. Respondent corporation is

doing business as La Costa Country Club. Said country club is a large, complete resort which had approximately 950 employees in July, 1977.

2. Respondent has, on an on-going basis, taken affirmative steps to attempt to control prostitution on its premises as follows:

(a) Employment of security personnel; (b) Cooperation with and maintaining a working relationship with the Carlsbad Police Department; (c) Adopting unwritten rules forbidding employees to solicit or otherwise be involved in prostitution; (d) Communicating such rules to its department heads, including Frank Rayo.

3. Frank Rayo was terminated by respondent upon management being informed of his said misconduct.

4. The actions of Frank Rayo in relation to said misconduct were



performed in a surreptitious manner.

In addition, La Costa proved the following:

1. That Frank Rayo had no control or authority with respect to the operation of the La Costa cocktail lounge, bar or liquor facilities.

2. That Frank Rayo had no policy-making authority whatsoever.

3. No person in a managerial capacity at La Costa was aware of Frank Rayo's misconduct.

The Administrative Law Judge then totally disregarded all the evidence presented by La Costa other than as she acknowledged in her Special Findings listed above. Contrary to the California Constitution, Article XX, Section 22 requiring that good cause be shown that the continuance of the license would be contrary to the public welfare and morals, and in the absence of any such showing

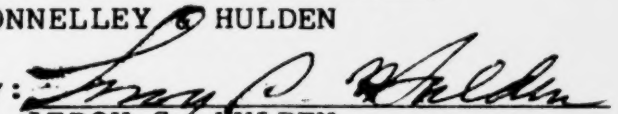
or any such findings, the Administrative Law Judge recommended suspension of the La Costa liquor license. In other words, La Costa has been held strictly responsible for the single surreptitious act of an employee not shown to be within the course and scope of his duties, where it had done all it reasonable could to prevent this kind of activity on the premises, in accordance with the doctrine of strict liability. This is also in accordance with the argument of the Department that even if a groundskeeper raking a sand trap on the golf course attempted to procure a woman for prostitution, the doctrine of strict liability applied and La Costa's liquor licenses would be either suspended or revoked. This interpretation of the California Constitution and Statutes is totally erroneous in that it ignores the requirement that there be shown "good



cause" for imposition of discipline, and that it be shown that the "continuance of the license would be contrary to the public welfare and morals".

No such findings were made. Furthermore, in view of the evidence of La Costa's conserted efforts to avoid and prevent illegal activities upon its premises, no such findings could be made. The actions and decisions of the Administrative Law Judge, the Department, and the Board were arbitrary, unreasonable, and in violation of the California Constitution and the due process clause of the Fourteenth Amendment of the Unitied States Constitution.

RESPECTFULLY SUBMITTED,
DONNELLEY & HULDEN

By: 
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